

Remarks

Claims 1-14 are pending. The Examiner has restricted the patent application. The Applicants respectfully traverse the restriction requirement entered by the Examiner. More particularly, the Applicants submit that this is an improper and unfounded restriction.

The following summarizes the laws of restriction. The Applicants remind the Examiner that the MPEP is not binding law, but merely a guide for Patent Office procedure. "If two or more independent and distinct inventions *are claimed* in one application, the Director may require the application to be restricted to one of the inventions". 35 U.S.C. § 121 (emphasis added). Further, "[t]wo or more independent and distinct inventions may not *be claimed* in one national application". 37 C.F.R. § 1.141 (emphasis added). "If two or more independent and distinct inventions *are claimed* in a single application, the examiner in the Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted". 37 C.F.R. § 1.142 (emphasis added).

According to the prevailing law, the Examiner needs to identify two or more independent and distinct inventions *as claimed* in an application in order to require a restriction. The Examiner failed to show how the pending application *claims* two or more independent and distinct inventions under 35 U.S.C. § 121 and 37 C.F.R. § 1.141 and 1.142. The Examiner also failed to indicate which claims can be grouped together to form independent and distinct inventions. Because the Examiner completely failed to discuss the claims of the pending application and describe how the pending application *claims* two independent and distinct inventions, the Applicants submit that this restriction is improper.

The Examiner states in the Office action that there are distinct species of the invention by referencing the specification of the pending application. This indicates to the Applicants that the Examiner believes that the specification can define separate species. The Applicants submit that a species is defined by the claims of an application, not the specification of an application. An application may have 100 different embodiments, but if the claims of the application define only a single species, then the application only has one species. By not discussing the claims, the Examiner failed to properly identify multiple species *as claimed*. Therefore, the Applicants further submit that this restriction is improper because the Examiner tried to define distinct species by looking solely at the specification.

Based on the above remarks, the Applicants ask the Examiner to reconsider the restriction requirement and withdraw the restriction. If the Examiner maintains the restriction requirement, the Applicants ask the Examiner to provide the following:

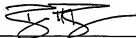
1. Identify the relevant portions of the statutes or rules giving the Examiner the authority for a restriction based on a specification;
2. Identify two or more independent and distinct inventions *as claimed* in the pending application;
3. Identify groupings of claims belonging to the identified independent and distinct inventions;
4. Discuss how the inventions are independent and distinct.

To follow proper procedure, the Applicants are supposed to provisionally elect an invention. However, the Applicants cannot identify an invention to elect based on the description provided by the Examiner on pages 2-3 of the Office action. The Applicants will thus hereby elect the invention defined in claims 1-14 until such time that the Examiner identifies independent and distinct inventions in the claims.

Respectfully submitted,

Date:

8-20-07



SIGNATURE OF PRACTITIONER

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